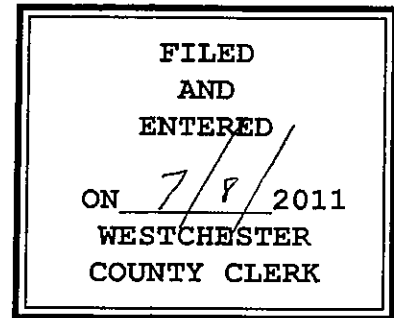


To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. WILLIAM J. GIACOMO, J.S.C.

-----X  
In the Matter of the Application of  
DAN SCHORR AS INSPECTOR GENERAL OF THE CITY  
OF YONKERS and THE DEPARTMENT OF INSPECTOR  
GENERAL OF THE CITY OF YONKERS,

Petitioners,

Index No. 29705/2010  
**DECISION & ORDER**

For an Order Pursuant to CPLR 2308(b) to Compel  
Compliance with a Duly Served Subpoena,

-against-

THE YONKERS FEDERATION OF TEACHERS WELFARE  
FUND, and PAT PULEO, in her capacity as  
CHAIRPERSON OF THE YONKERS FEDERATION OF  
TEACHERS WELFARE FUND,

Respondents.  
-----X

The following papers numbered 1 to 21 were read on petitioners' motion to compel compliance with a non-judicial subpoena and respondents' motion to quash.

**PAPERS NUMBERED**

Notice of Motion to Compel/Affirmation/Affidavit/Exhibits A-H  
Memorandum of Law

1-11  
12

Notice of Motion to Quash/Affidavits/Exhibits A-E	13-19
Memorandum of Law in Opposition	20
Reply Affidavit	21

13-19
20
21

## **Factual and Procedural Background**

On October 25, 2010, respondents were served with a Subpoena Duces Tecum by petitioners asking for production of certain financial records of the Yonkers Federation of Teachers Welfare Fund ("the Fund"). According to petitioners, the information sought is essential to the audit of the Fund being conducted by petitioners. Petitioners claim that an audit of the Fund is a logical extension of the Inspector General office's investigation of the finances of the Board of Education, which has been ongoing for over ten years.

Due to respondents refusal to comply with the subpoena, petitioners have commenced this action. In support of their motion, petitioners submit the affidavit of Dan Schorr Inspector General of the City of Yonkers. In his affidavit, Schorr contends that petitioners have the authority to issue the subpoena pursuant to the City Charter. Specifically, Article VII, Section C7-2, the powers and duties of the Inspector General read, in relevant part:

B. The Inspector General is authorized and empowered to make any investigations or reviews which in his or her opinion is necessary to uncover any wrongdoing in City government. For such purposes, the Inspector General may investigate affairs, function, accounts, methods and personnel of any agency.

D. The jurisdiction of the Inspector General shall extend to any agency, officer or employee of the city, or **any person or entity doing business with the city, or any person or entity who is paid or receives money from or through the city** or any agency of the city. (emphasis supplied)

**E. The Inspector General shall have the power to subpoena witnesses, administer oaths, take sworn testimony and compel production of books, papers, records and other evidence in furtherance of his/her duties and powers.** Failure to obey such subpoena as ordered under this provision shall constitute a misdemeanor.

According to Schorr, there is no dispute that petitioners have the authority to investigate the Yonkers School District's non-educational expenditures and can subpoena records from the unions' trust and welfare funds since these matters do not pertain to educational or pedagogical matters. Schorr states that the Fund administers payments for dental, prescription, optical, legal services, and other benefits for teachers.

Schorr notes that the source of about \$4 million deposited in the Fund is the Yonkers Board of Education. Schorr argues that this means that the City of Yonkers has a substantial interest in the Fund and, thus, an audit is appropriate. Schorr also notes that in a July 1, 2010 decision of this Court, the Board of Education of the City of Yonkers was required to comply with a subpoena duces tecum that the Yonkers Inspector General had served upon it in 2009 which called for financial records and testimony of school officials. This Court's holding was based upon (1) the significant amount of funding that the Yonkers City School District received from the City, to wit, \$218 million or 45% of the District's \$484 million budget in fiscal year 2009-2010; (2) separately conducted studies by the District's own auditors concluded that the District would be vulnerable to improper or unnecessary disbursements of funds in the area of purchasing and employee benefits; and (3) the documents and testimony sought by the subpoena reasonably related to the subject of the investigation.

Schorr notes that since the City of Yonkers has a substantial interest in the Fund, it decided to audit the Fund for the complete calendar year of 2009 and requested records

of all Fund expenditures for that period. In response to this request, the Fund provided Schorr's office with its 2007 and 2008 financial statements, a booklet given to teachers to make them aware of the Fund benefits and some blank claims forms. According to Schorr, the financial statements provide only general information regarding payments made by the Fund which is inadequate for audit purposes.

Schorr made several additional attempts to obtain further information, but received nothing. Thus, on October 25, 2010, Schorr's office served the subpoena which is the subject of this litigation on Pat Puleo, Chairperson of the Fund, commanding her to appear on November 8, 2010, to testify under oath and to bring the documents requested by the subpoena. The subpoena requested the following documents: (1) 2009 Yonkers Federation of Teachers Welfare Fund certified Financial Statements, and (2) 2009 Yonkers Federation of Teachers Welfare Fund check registers for the following benefits: dental, prescription drugs, optical and legal.

Ms. Puleo did not appear and on November 4, 2010, Schorr received a letter from the Fund's legal counsel stating that: the Inspector General lacked the authority to subpoena Fund records; the subpoena was overly broad and failed to identify the documents with sufficient particularity; the Fund does not need to be audited because its accountant, consultant and investment advisor suffice as an "independent audit;" and the records previously supplied by the Fund are sufficient for conducting an audit.

Schorr claims that based upon the City Charter and the July 1, 2010 decision of this Court, which was not appealed, the Office of the Inspector General has the authority to audit the Fund and issue the subject subpoena, and seeks an order compelling the Fund's compliance with the Subpoena.

The Fund cross moves to quash the subpoena. In support of its motion the Fund submits the affidavit of Patricia Puleo. Puleo argues that the subpoena is over broad and seeks privileged information without a factual basis and is not reasonable.

Puleo notes that on or about August 31, 2009, she received a call from Schorr asking for a meeting so that he could understand how the Fund operates. Puleo claims that she fully cooperated with Schorr and provided him with the Funds 2007 and 2008 financial statements, the Fund's Summary Plan Description and related claim forms. She also claims that when it became available the 2009 financial statement was provided to Schorr.

According to Puleo, on October 1, 2010, Gene Zilempe, Vice President of the Fund, legal counsel and "Accountant/Auditor"<sup>1</sup> met with Schorr, his Deputy Inspector General and a Senior Investigator. Puleo claims that Zilempe answered all of Schorr's questions. At the meeting, Schorr reviewed the role of the Fund's consultant, investment advisor and auditor in ensuring that the Fund's assets were appropriately safeguarded and dispensed for the benefit of its members. Puleo claims that in light of the documents previously provided there is no basis to provide Schorr with any additional documents. Further, since the 2009 financial statement was provided to Schorr the only documents not provided were the check registers which, according to Puleo, would serve no purpose and would identify employees who received medical and/or legal benefits, which is private and privileged information. Puleo claims that Schorr is on a fishing expedition and there is no reason why the Fund need comply with the subpoena. The Fund submitted the affidavit of Eugene Zilempe which sets forth similar facts.

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<sup>1</sup>The "Accountant/Auditor" attended the meeting via the phone.

In reply, Schorr notes that section C7-2 of the Yonkers City Charter provides that the Inspector General's jurisdiction extends to "any agency, officer, or employee of the city, or any person or entity doing business with the city, or any person or entity who is paid or receives money from or through the city or any agency of the city" (Yonkers City Charter § C7-2[C]). Further, his office's duties include: "[to] investigate the affairs, function, accounts, methods, and personnel of any agency; compel production of books, papers, records, and other evidence in furtherance of his/her duties and powers; establish, maintain, and monitor . . . adequate internal control procedures to ensure maximum integrity [including] ongoing review of monetary commitments, expenditures and processes; deter and detect waste, fraud, abuse and misuse of city resources or assets." (Yonkers City Charter §C7-2[B]-[G]).

Schorr acknowledged that his office received the 2009 Certified Financial statement; therefore, the only remaining items sought are: 2009 Yonkers Federation of Teachers Welfare Fund check registers for the following benefits: dental, prescription drugs, optical and legal. Schorr notes that although the Funds claims that the documents cannot be produced because of privacy issues, the Fund does not cite any privacy law that would be violated.

## **Discussion**

As this Court noted in its July 1, 2010 decision, the Office of the Inspector General possess the authority to audit organizations which receive substantial funds from the City of Yonkers. Therefore, the Fund is directed to comply with the October 25, 2010 subpoena.

Yonkers City Charter Article VII, Section C7-2 (D) clearly allows the Office of the Inspector General to investigate or review "any person or entity who is paid or receives

money from or through the city or any agency of the city.” Further, New York General City Law § 20(21) empowers a city “to investigate and inquire into all matter of concern to the city or its inhabitants, and require an enforce by subpoena the attendance of witnesses at such investigations.”

Here, there is no dispute that the Fund receives the vast majority of its funding, approximately \$4 million, from the City of Yonkers through the City of Yonkers Board of Education. Thus, the Office of the Inspector General as well as the inhabitants of the City of Yonkers have a compelling interest in how their \$4 million is spent. (*See Maloff v. City Commission on Human Rights*, 38 NY2d 329 [1975][“While the educational affairs in each city are under the general management and control of the board of education, such board is subject to municipal control in matters not strictly educational or pedagogic.”(citations omitted)” ]).

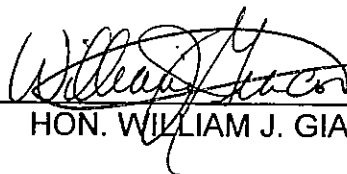
Moreover, court ordered compliance with a non-judicial subpoena is warranted where the investigative agency has the authority to engage in the investigation and issue a subpoena, there is an authentic factual basis to warrant investigation, and the evidence sought is reasonable. (*See Adams v. Thruway Food Market & Shopping Center, Inc.*, 147 Ad2d 143 [2<sup>nd</sup> Dept 1989]).

Here, the fact that the City of Yonkers provides almost all of the funding for the Fund provides an authentic basis upon which a subpoena can be issued. Further, in view of the fact that there are two reports which recommend that additional audits of the Board of Education of the City of Yonkers’s health care and union trust and welfare payments be made also provide an authentic basis for the investigation.

Finally, the court finds that the scope of the subpoena is appropriate. While the Fund claims that producing the check registers violates public policy or privacy laws, it offers no legal support for this position. Moreover, without the check registers the Inspector General could not determine whether the Fund has complied with certain limitations placed on reimbursements available to fund members.

Accordingly, the Court GRANTS the Inspector General's motion and directs the Fund to comply with the October 25 2010 non judicial subpoena. The Fund's motion to quash the subpoena is denied.

Dated: White Plains, New York  
July 5, 2011

  
HON. WILLIAM J. GIACOMO, J.S.C.

cc: Mark W. Blanchard  
Corporation Counsel  
City Hall, Room 300  
Yonkers, New York 10701

Mirkin & Gordon, PC  
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**For Court purposes only: Final Disp: Yes**  
**Appearances: No**  
**Number of Motions: 2**